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QA - 21484

FHWA - 97-2350-34

JANUARY 29, 1997

FEDERAL HIGHWAY ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
ROOM 4232
400 SEVENTH STREET, SW
WASHINGTON, D.C. 20590

RE: FHWA DOCKET NO. MC-96-28
COMMENTS ON ANPRM CONCERNING HOURS OF SERVICE CHANGES

DEAR DOCKET CLERK;

PLEASE CONSIDER MY COMMENTS ON THE FOLLOWING FOUR QUESTIONS OF
PROPOSED ANPRM CONCERNING HOURS OF SERVICE CHANGES.

33. WHAT CONSEQUENCES, IF ANY, SHOULD BE IMPOSED UPON A SHIPPER
OR CONSIGNEE IF A DRIVER VIOLATES THE HOURS OF SERVICE {HOS}
REQUIREMENTS DUE TO THE ACTIONS OR DEMANDS OF THE SHIPPER OR
CONSIGNEE?

FROM MY PAST TWENTY TWO YEARS EXPERIENCE I HAVE BOTH WITNESSED
AND BEEN SUBJECT TO THESE DEMANDS FROM BOTH SHIPPERS AND
CONSIGNEES. WHILE PONDERING THIS QUESTION THE FIRST THOUGHT TO
MIND IS HOW WOULD SOMETHING LIKE THIS EVER BE POLICED. GRANTED
IT MIGHT SEEM DIFFICULT AT FIRST BUT A PROBLEM OF THIS MAGNITUDE
CANNOT BE SHOVED ASIDE AND FORGOTTEN. IT WILL NOT GO AWAY!

PERHAPS A UNIFORM DOCUMENT COULD BE COMPOSED WHICH WOULD REQUIRE
INFORMATION ON ARRIVAL TIME TO LOAD, DEPARTURE TIME, ETC. THEN A
SECTION FOR THE DRIVER TO COMPLETE WHICH SHOULD INCLUDE TOTAL
HOURS ON DUTY THE LAST SEVEN DAYS, HOURS ON DUTY SO FAR FOR THIS
TOUR OF DUTY, AND THE EARLIEST LEGAL ARRIVAL TIME AT THE
DESTINATION. THIS COULD EASILY BE FIGURED OUT BY THE DRIVER IF
THEY ARE AT ALL FAMILIAR WITH LOG "RECAPS". THEN THIS DOCUMENT
COULD BE SIGNED BY BOTH PARTIES AS A MUTUAL AGREEMENT. IF THE
SHIPPER REFUSES TO COMPLY THIS SHOULD BE CONSIDERED A BROKEN LAW
AND REPORTABLE. CARRIERS WHO WOULD OFFER TO FABRICATE THIS
DOCUMENT TO AVOID COMPLIANCE SHOULD BE HANDLED IN A LIKE MANNER.

THIS IS ONLY AN IDEA FOR A PROBLEM MORE SERIOUS THAN MOST PEOPLE
IMAGINE. WITH THE THREAT OF THE LOAD BEING TAKEN IF THE DRIVER
DOES NOT DELIVER TO THEIR SCHEDULE, NOT A LEGAL ONE, THE SHIPPER

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NOW HAS THE UPPER HAND. WITH NO THREAT OF RECOURSE TO THEM WHY SHOULD THEY CARE. WITH A PENALTY THAT COULD BE IMPOSED AND ENFORCED IT WOULD GIVE THEM A DIFFERENT PERSPECTIVE TOWARD THIS MANNER.

THIS "CONSEQUENCE TO BE IMPOSED" SHOULD BE STRONG AND HARSH ENOUGH TO ELIMINATE THE THOUGHT OF EVEN CONSIDERING AN ILLEGAL DEMAND OR REQUEST OF THE DRIVER OR CARRIER.

34. HOW SHOULD THE LOADING AND UNLOADING OF FREIGHT, LUMPING, AND ENGAGING IN ACTIVITIES OTHER THAN DRIVING BE ADDRESSED?

IN MY OPINION THE SHIPPER SHOULD BE SOLELY RESPONSIBLE FOR LOADING, PERIOD. THE DRIVER SHOULD BE RESPONSIBLE FOR SECURING THE LOAD OR CHECKING TO SEE IF IT HAS BEEN DONE PROPERLY. IF SPECIAL EQUIPMENT IS REQUIRED FOR UNLOADING {FORKLIFT, CRANE, ETC.} THE CONSIGNEE SHOULD BE RESPONSIBLE FOR UNLOADING. PALLETIZED LOADS THAT NEED TO BE BROKEN DOWN INTO SMALLER UNITS SHOULD BE THE RESPONSIBILITY OF THE CONSIGNEE. THE ONLY TIME A DRIVER SHOULD BE RESPONSIBLE FOR UNLOADING THEIR LOAD IS IF IT REQUIRES SPECIAL EQUIPMENT ATTACHED TO THE TRAILER SUCH AS A HYDRAULIC LIFTGATE, SPRING LOADED FORKS, ETC. THE RULE IS THERE IS NO COMPENSATION FOR UNLOADING BY THE DRIVER MADE BY EITHER THE SHIPPER OR CONSIGNEE. IN A SITUATION WHERE THIS CANNOT BE ACCOMPLISHED BY THE CUSTOMER IT SHOULD BE MADE KNOWN UP FRONT WITH COMPENSATION STATED ON THE PACKING SLIP/BILL OF LADING.

IT IS MY OPINION THAT IF THESE OR SIMILAR GUIDELINES WERE FOLLOWED IT WOULD ALSO MORE CLEARLY DEFINE ROLES OF RESPONSIBILITY FOR WORKER'S COMP.

35. HOW SHOULD SITUATIONS WHERE DRIVERS ENCOUNTER DELAYS AT SHIPPERS OR CONSIGNEES BE CONSIDERED IN THE PROPOSAL?

THERE SHOULD BE A SPACE ON THE UNIFORM BILL OF LADING FOR AMOUNT OF "FREE TIME" ALLOWED AT THE CUSTOMER'S AND BE FILLED OUT AND SIGNED BY BOTH PARTIES AT THE SHIPPER'

S. COMPENSATION TO BE GRANTED FOR ANY DELAY TIME ALSO NEEDS TO BE INCLUDED AND WHETHER IT IS TO BE PAID BY THE SHIPPER OR CONSIGNEE. THIS ALSO NEEDS TO BE CONSIDERED WITH #33 AS FAR AS IT'S EFFECT ON EARLIEST LEGAL ARRIVAL TIME.

36. SHOULD THE FHWA SEEK LEGISLATION FROM CONGRESS TO REGULATE SHIPPERS AND CONSIGNEES TO PROHIBIT THEM FROM MAKING DEMANDS ON A MOTOR CARRIER AND ITS DRIVERS THAT WOULD CAUSE A VIOLATION OF THE HOS RULES? WHY?

MOST DEFINITELY THEY SHOULD!!!!!!!!!!

IT WOULD BE A JOKE TO THINK ANY CHANGES WOULD EVER COME ABOUT IF SOME SORT OF ENFORCEABLE LEGISLATION IS NOT PASSED. THE TRUCKING INDUSTRY SHOULD NOT HAVE TO LIVE UNDER THE OPPRESSION OF SHIPPERS AND CONSIGNEES ILLEGAL AND UNREASONABLE DEMANDS.

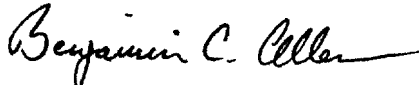
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WHEN AND IF PASSED IT WOULD ALSO HAVE TO BE CLEARLY DOCUMENTED.
THIS WOULD ALSO CLEAR THE SHIPPER OR CUSTOMER IF THE DRIVER
VIOLATES THE HOS ON HIS OWN.

IT IS MY OPINION THAT THIS PROPOSED LEGISLATION SHOULD APPLY TO
EXEMPT COMMODITIES AS WELL AS FREIGHT. FROM MY PAST EXPERIENCES
IT WAS A MUCH, MUCH BIGGER PROBLEM OF ILLEGAL DELIVERY TIME
DEMANDS COMING FROM EXEMPT COMMODITY SHIPPERS AND RECEIVERS.

THANK YOU FOR THE OPPORTUNITY TO GIVE AN OPINION.

SINCERELY,



BENJAMIN C. ALLEN

TRAFFIC MANAGER, FLORAL PLANT GROWERS, LLC

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